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[Smith v. Tennessee Valley Authority](#), 89-ERA-12 (Sec'y Jan. 24, 1996)

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DATE: January 24, 1996
CASE NO. 89-ERA-12

IN THE MATTER OF

FRANK C. SMITH, JR.,

and

MICHAEL H. FITZPATRICK,

COMPLAINANTS,

v.

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT
AND DISMISSING COMPLAINT

This case arises under the employee protection provisions of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (1988 and Supp. V 1993). The parties submitted a Memorandum of Understanding and Agreement seeking approval of the settlement and dismissal of the complaint. On December 5, 1995, the Administrative Law Judge issued a decision recommending that the settlement be approved. Because the request for approval is based on the agreement entered into by the parties, I must review it to determine whether the terms are a fair, adequate and reasonable settlement of the complaint. 42 U.S.C. § 5851(b)(2)(A) (1988). *Macktal v. Secretary of Labor*, 923 F.2d 1150, 1153-54 (5th Cir. 1991); *Thompson v. U.S. Dep't of Labor*, 885 F.2d 551, 556 (9th Cir. 1989); *Fuchko and Yunker v. Georgia Power Co.*, Case Nos. 89-ERA-9, 89-ERA-10, Sec. Order, Mar. 23,

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1989, slip op. at 1-2.

The agreement appears to encompass the settlement of matters arising under various laws, only one of which is the ERA. See ¶¶ 1 and 2. For the reasons set forth in

Poulos v. Ambassador Fuel Oil Co., Inc., Case No. 86-CAA-1, Sec. Order, Nov. 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate and reasonable settlement of the Complainant's allegations the Respondent violated the ERA.

Paragraph 3 provides that the Complainant shall not disclose the terms of the agreement except to Complainant's family, tax advisors or attorneys. The agreement's preamble provides that the agreement does not prohibit or restrict the Complainant from reporting or providing information to any Federal or state governmental agency.

Although the parties have designated the documents in this case as confidential commercial information, the Freedom of Information Act (FOIA), 5 U.S.C. § 552 (1988), requires Federal agencies to disclose requested records unless they are exempt from disclosure under the Act.[1] See *Debose v. Carolina Power & Light Co.*, Case No. 92-ERA-14, Order Disapproving Settlement and Remanding Case, Feb 7, 1994, slip op. at 2-3 and cases there cited.

I find that the agreement, as here construed, is a fair, adequate and reasonable settlement of the complaint. Accordingly, I APPROVE the agreement and DISMISS THE COMPLAINT WITH PREJUDICE. Paragraph 1.

SO ORDERED.

ROBERT B. REICH
Secretary of Labor

Washington, D.C.

[ENDNOTES]

[1]

Pursuant to 29 C.F.R. § 70.26(b), submitters may designate specific information as confidential commercial information to be handled as provided in the regulations. When FOIA requests are received for such information, the Department of Labor will notify the submitter promptly, 29 C.F.R. § 70.26(c); the submitter will be given a reasonable amount of time to state its objections to disclosure, 29 C.F.R. § 70.26(e); and the submitter will be notified if a decision is made to disclose the information, 29 C.F.R. § 70.26(f). If the information is withheld and a suit is filed by the requester to compel disclosure, the submitter will be notified, 29 C.F.R. § 70.26(h).